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108TH CONGRESS  
2D SESSION

**S. 344**

**[Report No. 108-\_\_\_\_]**

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 11, 2003

Mr. AKAKA (for himself, Mr. INOUE, Mr. REID, Mr. STEVENS, Mr. HATCH, Mr. SMITH, and Mr. CAMPBELL) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

APRIL \_\_\_\_ (legislative day, \_\_\_\_\_), 2004

Reported by Mr. CAMPBELL, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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**A BILL**

Expressing the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. FINDINGS.**

2 Congress makes the following findings:

3 (1) The Constitution vests Congress with the  
4 authority to address the conditions of the indige-  
5 nous, native people of the United States.

6 (2) Native Hawaiians, the native people of the  
7 Hawaiian archipelago which is now part of the  
8 United States, are indigenous, native people of the  
9 United States.

10 (3) The United States has a special trust rela-  
11 tionship to promote the welfare of the native people  
12 of the United States, including Native Hawaiians.

13 (4) Under the treaty making power of the  
14 United States, Congress exercised its constitutional  
15 authority to confirm a treaty between the United  
16 States and the government that represented the Ha-  
17 waiian people, and from 1826 until 1893, the United  
18 States recognized the independence of the Kingdom  
19 of Hawaii, extended full diplomatic recognition to  
20 the Hawaiian Government, and entered into treaties  
21 and conventions with the Hawaiian monarchs to gov-  
22 ern commerce and navigation in 1826, 1842, 1849,  
23 1875, and 1887.

24 (5) Pursuant to the provisions of the Hawaiian  
25 Homes Commission Act, 1920 (42 Stat. 108, chap-  
26 ter 42), the United States set aside 203,500 acres

1 of land in the Federal territory that later became  
2 the State of Hawaii to address the conditions of Na-  
3 tive Hawaiians.

4 (6) By setting aside 203,500 acres of land for  
5 Native Hawaiian homesteads and farms, the Act as-  
6 sists the Native Hawaiian community in maintaining  
7 distinct native settlements throughout the State of  
8 Hawaii.

9 (7) Approximately 6,800 Native Hawaiian les-  
10 sees and their family members reside on Hawaiian  
11 Home Lands and approximately 18,000 Native Ha-  
12 waiians who are eligible to reside on the Home  
13 Lands are on a waiting list to receive assignments  
14 of land.

15 (8) In 1959, as part of the compact admitting  
16 Hawaii into the United States, Congress established  
17 the Ceded Lands Trust for 5 purposes, 1 of which  
18 is the betterment of the conditions of Native Hawai-  
19 ians. Such trust consists of approximately 1,800,000  
20 acres of land, submerged lands, and the revenues de-  
21 rived from such lands, the assets of which have  
22 never been completely inventoried or segregated.

23 (9) Throughout the years, Native Hawaiians  
24 have repeatedly sought access to the Ceded Lands  
25 Trust and its resources and revenues in order to es-

1       tablish and maintain native settlements and distinct  
2       native communities throughout the State.

3           (10) The Hawaiian Home Lands and the Ceded  
4       Lands provide an important foundation for the abil-  
5       ity of the Native Hawaiian community to maintain  
6       the practice of Native Hawaiian culture, language,  
7       and traditions, and for the survival of the Native  
8       Hawaiian people.

9           (11) Native Hawaiians have maintained other  
10      distinctly native areas in Hawaii.

11          (12) On November 23, 1993, Public Law 103-  
12      150 (107 Stat. 1510) (commonly known as the Apol-  
13      ogy Resolution) was enacted into law, extending an  
14      apology on behalf of the United States to the Native  
15      people of Hawaii for the United States role in the  
16      overthrow of the Kingdom of Hawaii.

17          (13) The Apology Resolution acknowledges that  
18      the overthrow of the Kingdom of Hawaii occurred  
19      with the active participation of agents and citizens  
20      of the United States and further acknowledges that  
21      the Native Hawaiian people never directly relin-  
22      quished their claims to their inherent sovereignty as  
23      a people over their national lands to the United  
24      States, either through their monarchy or through a  
25      plebiscite or referendum.

1           (14) The Apology Resolution expresses the com-  
2           mitment of Congress and the President to acknowl-  
3           edge the ramifications of the overthrow of the King-  
4           dom of Hawaii and to support reconciliation efforts  
5           between the United States and Native Hawaiians;  
6           and to have Congress and the President, through the  
7           President's designated officials, consult with Native  
8           Hawaiians on the reconciliation process as called for  
9           under the Apology Resolution.

10          (15) Despite the overthrow of the Hawaiian  
11          Government, Native Hawaiians have continued to  
12          maintain their separate identity as a distinct native  
13          community through the formation of cultural, social,  
14          and political institutions, and to give expression to  
15          their rights as native people to self-determination  
16          and self-governance as evidenced through their par-  
17          ticipation in the Office of Hawaiian Affairs.

18          (16) Native Hawaiians also give expression to  
19          their rights as native people to self-determination  
20          and self-governance through the provision of govern-  
21          mental services to Native Hawaiians, including the  
22          provision of health care services, educational pro-  
23          grams, employment and training programs, chil-  
24          dren's services, conservation programs, fish and  
25          wildlife protection, agricultural programs, native lan-

1        guage immersion programs and native language im-  
2        mersion schools from kindergarten through high  
3        school, as well as college and master's degree pro-  
4        grams in native language immersion instruction, and  
5        traditional justice programs, and by continuing their  
6        efforts to enhance Native Hawaiian self-determina-  
7        tion and local control.

8            (17) Native Hawaiians are actively engaged in  
9        Native Hawaiian cultural practices, traditional agri-  
10       cultural methods, fishing and subsistence practices,  
11       maintenance of cultural use areas and sacred sites,  
12       protection of burial sites, and the exercise of their  
13       traditional rights to gather medicinal plants and  
14       herbs, and food sources.

15           (18) The Native Hawaiian people wish to pre-  
16       serve, develop, and transmit to future Native Hawai-  
17       ian generations their ancestral lands and Native Ha-  
18       waiian political and cultural identity in accordance  
19       with their traditions, beliefs, customs and practices,  
20       language, and social and political institutions, and to  
21       achieve greater self-determination over their own af-  
22       fairs.

23           (19) This Act provides for a process within the  
24       framework of Federal law for the Native Hawaiian  
25       people to exercise their inherent rights as a distinct

1        ~~aboriginal, indigenous, native community to reorga-~~  
2        ~~nize a Native Hawaiian governing entity for the pur-~~  
3        ~~pose of giving expression to their rights as native~~  
4        ~~people to self-determination and self-governance.~~

5            ~~(20) The United States has declared that—~~

6                    ~~(A) the United States has a special respon-~~  
7                    ~~sibility for the welfare of the native peoples of~~  
8                    ~~the United States, including Native Hawaiians;~~

9                    ~~(B) Congress has identified Native Hawai-~~  
10                   ~~ians as a distinct indigenous group within the~~  
11                   ~~scope of its Indian affairs power, and has en-~~  
12                   ~~acted dozens of statutes on their behalf pursu-~~  
13                   ~~ant to its recognized trust responsibility; and~~

14                   ~~(C) Congress has also delegated broad au-~~  
15                   ~~thority to administer a portion of the Federal~~  
16                   ~~trust responsibility to the State of Hawaii.~~

17            ~~(21) The United States has recognized and re-~~  
18            ~~affirmed the special trust relationship with the Na-~~  
19            ~~tive Hawaiian people through the enactment of the~~  
20            ~~Act entitled “An Act to provide for the admission of~~  
21            ~~the State of Hawaii into the Union”, approved~~  
22            ~~March 18, 1959 (Public Law 86–3; 73 Stat. 4) by—~~

23                    ~~(A) ceding to the State of Hawaii title to~~  
24                    ~~the public lands formerly held by the United~~  
25                    ~~States; and mandating that those lands be held~~

1 in public trust for 5 purposes, one of which is  
2 for the betterment of the conditions of Native  
3 Hawaiians; and

4 (B) transferring the United States respon-  
5 sibility for the administration of the Hawaiian  
6 Home Lands to the State of Hawaii, but retain-  
7 ing the authority to enforce the trust, including  
8 the exclusive right of the United States to con-  
9 sent to any actions affecting the lands which  
10 comprise the corpus of the trust and any  
11 amendments to the Hawaiian Homes Commis-  
12 sion Act, 1920 (42 Stat. 108, chapter 42) that  
13 are enacted by the legislature of the State of  
14 Hawaii affecting the beneficiaries under the  
15 Act.

16 (22) The United States continually has recog-  
17 nized and reaffirmed that—

18 (A) Native Hawaiians have a cultural, his-  
19 toric, and land-based link to the aboriginal, na-  
20 tive people who exercised sovereignty over the  
21 Hawaiian Islands;

22 (B) Native Hawaiians have never relin-  
23 quished their claims to sovereignty or their sov-  
24 ereign lands;



1           (C) the United States extends services to  
2           Native Hawaiians because of their unique sta-  
3           tus as the aboriginal, native people of a once  
4           sovereign nation with whom the United States  
5           has a political and legal relationship; and

6           (D) the special trust relationship of Amer-  
7           ican Indians, Alaska Natives, and Native Ha-  
8           waiians to the United States arises out of their  
9           status as aboriginal, indigenous, native people  
10          of the United States.

11 **SEC. 2. DEFINITIONS.**

12       In this Act:

13           (1) ABORIGINAL, INDIGENOUS, NATIVE PEO-  
14       PLE.—The term “aboriginal, indigenous, native peo-  
15       ple” means those people whom Congress has recog-  
16       nized as the original inhabitants of the lands and  
17       who exercised sovereignty prior to European contact  
18       in the areas that later became part of the United  
19       States.

20           (2) APOLOGY RESOLUTION.—The term “Apol-  
21       ogy Resolution” means Public Law 103–150 (107  
22       Stat. 1510), a joint resolution extending an apology  
23       to Native Hawaiians on behalf of the United States  
24       for the participation of agents of the United States

1 in the January 17, 1893, overthrow of the Kingdom  
2 of Hawaii.

3 ~~(3) CEDED LANDS.~~—The term “ceded lands”  
4 means those lands which were ceded to the United  
5 States by the Republic of Hawaii under the Joint  
6 Resolution to provide for annexing the Hawaiian Is-  
7 lands to the United States of July 7, 1898 (30 Stat.  
8 750), and which were later transferred to the State  
9 of Hawaii in the Act entitled “An Act to provide for  
10 the admission of the State of Hawaii into the  
11 Union” approved March 18, 1959 (Public Law 86-  
12 3; 73 Stat. 4).

13 ~~(4) INDIGENOUS, NATIVE PEOPLE.~~—The term  
14 “indigenous, native people” means the lineal de-  
15 scendants of the aboriginal, indigenous, native peo-  
16 ple of the United States.

17 ~~(5) INTERAGENCY COORDINATING GROUP.~~—The  
18 term “Interagency Coordinating Group” means the  
19 Native Hawaiian Interagency Coordinating Group  
20 established under section 5.

21 ~~(6) NATIVE HAWAIIAN.~~—

22 ~~(A)~~ Prior to the recognition by the United  
23 States of the Native Hawaiian governing entity,  
24 the term “Native Hawaiian” means the indige-  
25 nous, native people of Hawaii who are the di-

1           rect lineal descendants of the aboriginal, indige-  
2           nous, native people who resided in the islands  
3           that now comprise the State of Hawaii on or  
4           before January 1, 1893, and who occupied and  
5           exercised sovereignty in the Hawaiian archi-  
6           pelago, including the area that now constitutes  
7           the State of Hawaii, and includes all Native  
8           Hawaiians who were eligible in 1921 for the  
9           programs authorized by the Hawaiian Homes  
10          Commission Act (42 Stat. 108, chapter 42) and  
11          their lineal descendants.

12           (B) Following the recognition by the  
13          United States of the Native Hawaiian gov-  
14          erning entity, the term “Native Hawaiian” shall  
15          have the meaning given to such term in the or-  
16          ganic governing documents of the Native Ha-  
17          waiian governing entity.

18          (7) NATIVE HAWAIIAN GOVERNING ENTITY.—  
19          The term “Native Hawaiian governing entity”  
20          means the governing entity organized by the Native  
21          Hawaiian people.

22          (8) SECRETARY.—The term “Secretary” means  
23          the Secretary of the Interior.

24   **SEC. 3. UNITED STATES POLICY AND PURPOSE.**

25          (a) POLICY.—The United States reaffirms that—

1           (1) Native Hawaiians are a unique and distinct,  
2           indigenous, native people, with whom the United  
3           States has a political and legal relationship;

4           (2) the United States has a special trust rela-  
5           tionship to promote the welfare of Native Hawaiians;

6           (3) Congress possesses the authority under the  
7           Constitution to enact legislation to address the con-  
8           ditions of Native Hawaiians and has exercised this  
9           authority through the enactment of—

10           (A) the Hawaiian Homes Commission Act,  
11           1920 (42 Stat. 108, chapter 42);

12           (B) the Act entitled “An Act to provide for  
13           the admission of the State of Hawaii into the  
14           Union”, approved March 18, 1959 (Public Law  
15           86–3, 73 Stat. 4); and

16           (C) more than 150 other Federal laws ad-  
17           dressing the conditions of Native Hawaiians;

18           (4) Native Hawaiians have—

19           (A) an inherent right to autonomy in their  
20           internal affairs;

21           (B) an inherent right of self-determination  
22           and self-governance; and

23           (C) the right to reorganize a Native Ha-  
24           waiian governing entity; and

1           (5) the United States shall continue to engage  
2           in a process of reconciliation and political relations  
3           with the Native Hawaiian people.

4           (b) PURPOSE.—It is the intent of Congress that the  
5           purpose of this Act is to provide a process for the recogni-  
6           tion by the United States of a Native Hawaiian governing  
7           entity for purposes of continuing a government-to-govern-  
8           ment relationship.

9   **SEC. 4. ESTABLISHMENT OF THE UNITED STATES OFFICE**  
10                           **FOR NATIVE HAWAIIAN RELATIONS.**

11          (a) IN GENERAL.—There is established within the  
12          Office of the Secretary the United States Office for Native  
13          Hawaiian Relations.

14          (b) DUTIES OF THE OFFICE.—The United States Of-  
15          fice for Native Hawaiian Relations shall—

16                (1) effectuate and coordinate the trust relation-  
17                ship between the Native Hawaiian people and the  
18                United States; and upon the recognition of the Na-  
19                tive Hawaiian governing entity by the United States;  
20                between the Native Hawaiian governing entity and  
21                the United States through the Secretary; and with  
22                all other Federal agencies;

23                (2) continue the process of reconciliation with  
24                the Native Hawaiian people; and upon the recogni-  
25                tion of the Native Hawaiian governing entity by the

1 United States, continue the process of reconciliation  
2 with the Native Hawaiian governing entity;

3 (3) fully integrate the principle and practice of  
4 meaningful, regular, and appropriate consultation  
5 with the Native Hawaiian governing entity by pro-  
6 viding timely notice to, and consulting with the Na-  
7 tive Hawaiian people and the Native Hawaiian gov-  
8 erning entity prior to taking any actions that may  
9 have the potential to significantly affect Native Ha-  
10 waiian resources, rights, or lands;

11 (4) consult with the Interagency Coordinating  
12 Group, other Federal agencies, and with relevant  
13 agencies of the State of Hawaii on policies, prac-  
14 tices, and proposed actions affecting Native Hawai-  
15 ian resources, rights, or lands; and

16 (5) prepare and submit to the Committee on  
17 Indian Affairs and the Committee on Energy and  
18 Natural Resources of the Senate, and the Committee  
19 on Resources of the House of Representatives an an-  
20 nual report detailing the activities of the Interagency  
21 Coordinating Group that are undertaken with re-  
22 spect to the continuing process of reconciliation and  
23 to effect meaningful consultation with the Native  
24 Hawaiian governing entity and providing rec-  
25 ommendations for any necessary changes to existing

1 Federal statutes or regulations promulgated under  
2 the authority of Federal law.

3 **SEC. 5. NATIVE HAWAIIAN INTERAGENCY COORDINATING**  
4 **GROUP.**

5 (a) **ESTABLISHMENT.**—In recognition of the fact that  
6 Federal programs authorized to address the conditions of  
7 Native Hawaiians are largely administered by Federal  
8 agencies other than the Department of the Interior, there  
9 is established an interagency coordinating group to be  
10 known as the “Native Hawaiian Interagency Coordinating  
11 Group”.

12 (b) **COMPOSITION.**—The Interagency Coordinating  
13 Group shall be composed of officials, to be designated by  
14 the President, from—

15 (1) each Federal agency that administers Na-  
16 tive Hawaiian programs, establishes or implements  
17 policies that affect Native Hawaiians, or whose ac-  
18 tions may significantly or uniquely impact on Native  
19 Hawaiian resources, rights, or lands; and

20 (2) the United States Office for Native Hawai-  
21 ian Relations established under section 4.

22 (c) **LEAD AGENCY.**—The Department of the Interior  
23 shall serve as the lead agency of the Interagency Coordi-  
24 nating Group, and meetings of the Interagency Coordi-  
25 nating Group shall be convened by the lead agency.

1       (d) DUTIES.—The responsibilities of the Interagency  
2 Coordinating Group shall be—

3           (1) the coordination of Federal programs and  
4 policies that affect Native Hawaiians or actions by  
5 any agency or agencies of the Federal Government  
6 which may significantly or uniquely impact on Na-  
7 tive Hawaiian resources, rights, or lands;

8           (2) to assure that each Federal agency develops  
9 a policy on consultation with the Native Hawaiian  
10 people, and upon recognition of the Native Hawaiian  
11 governing entity by the United States; consultation  
12 with the Native Hawaiian governing entity; and

13           (3) to assure the participation of each Federal  
14 agency in the development of the report to Congress  
15 authorized in section 4(b)(5).

16 **SEC. 6. PROCESS FOR THE RECOGNITION OF THE NATIVE**  
17 **HAWAIIAN GOVERNING ENTITY.**

18       (a) RECOGNITION OF THE NATIVE HAWAIIAN GOV-  
19 ERNING ENTITY.—The right of the Native Hawaiian peo-  
20 ple to organize for their common welfare and to adopt ap-  
21 propriate organic governing documents is hereby recog-  
22 nized by the United States.

23       (b) PROCESS FOR RECOGNITION.—

24           (1) SUBMITTAL OF ORGANIC GOVERNING DOCU-  
25 MENTS.—Following the organization of the Native



1 Hawaiian governing entity, the adoption of organic  
2 governing documents, and the election of officers of  
3 the Native Hawaiian governing entity, the duly elect-  
4 ed officers of the Native Hawaiian governing entity  
5 shall submit the organic governing documents of the  
6 Native Hawaiian governing entity to the Secretary.

7 (2) CERTIFICATIONS.—

8 (A) IN GENERAL.—Within 90 days of the  
9 date that the duly elected officers of the Native  
10 Hawaiian governing entity submit the organic  
11 governing documents to the Secretary, the Sec-  
12 retary shall certify that the organic governing  
13 documents—

14 (i) establish the criteria for citizenship  
15 in the Native Hawaiian governing entity;

16 (ii) were adopted by a majority vote of  
17 the citizens of the Native Hawaiian gov-  
18 erning entity;

19 (iii) provide for the exercise of govern-  
20 mental authorities by the Native Hawaiian  
21 governing entity;

22 (iv) provide for the Native Hawaiian  
23 governing entity to negotiate with Federal,  
24 State, and local governments, and other  
25 entities;

1                   (v) prevent the sale, disposition, lease,  
2                   or encumbrance of lands, interests in  
3                   lands, or other assets of the Native Hawai-  
4                   ian governing entity without the consent of  
5                   the Native Hawaiian governing entity;

6                   (vi) provide for the protection of the  
7                   civil rights of the citizens of the Native  
8                   Hawaiian governing entity and all persons  
9                   subject to the authority of the Native Ha-  
10                  waiian governing entity, and ensure that  
11                  the Native Hawaiian governing entity exer-  
12                  cises its authority consistent with the re-  
13                  quirements of section 202 of the Act of  
14                  April 11, 1968 (25 U.S.C. 1302); and

15                  (vii) are consistent with applicable  
16                  Federal law and the special trust relation-  
17                  ship between the United States and the in-  
18                  digenous native people of the United  
19                  States.

20                  (B) BY THE SECRETARY.—Within 90 days  
21                  of the date that the duly elected officers of the  
22                  Native Hawaiian governing entity submit the  
23                  organic governing documents to the Secretary,  
24                  the Secretary shall certify that the State of Ha-  
25                  waii supports the recognition of a Native Ha-

1        waiian governing entity by the United States as  
2        evidenced by a resolution or act of the Hawaii  
3        State legislature.

4            (C) RESUBMISSION IN CASE OF NON-  
5        COMPLIANCE WITH FEDERAL LAW.—

6            (i) RESUBMISSION BY THE SEC-  
7        RETARY.—If the Secretary determines that  
8        the organic governing documents, or any  
9        part thereof, are not consistent with appli-  
10       cable Federal law, the Secretary shall re-  
11       submit the organic governing documents to  
12       the duly elected officers of the Native Ha-  
13       waiian governing entity along with a jus-  
14       tification for each of the Secretary's find-  
15       ings as to why the provisions are not con-  
16       sistent with such law.

17           (ii) AMENDMENT AND RESUBMISSION  
18        BY THE NATIVE HAWAIIAN GOVERNING EN-  
19        TITY.—If the organic governing documents  
20       are resubmitted to the duly elected officers  
21       of the Native Hawaiian governing entity by  
22       the Secretary under clause (i), the duly  
23       elected officers of the Native Hawaiian  
24       governing entity shall—

1                   (H) amend the organic governing  
2 documents to ensure that the docu-  
3 ments comply with applicable Federal  
4 law; and

5                   (HI) resubmit the amended or-  
6 ganic governing documents to the Sec-  
7 retary for certification in accordance  
8 with the requirements of this para-  
9 graph.

10               (D) CERTIFICATIONS DEEMED MADE.—

11               The certifications authorized in subparagraph  
12 (B) shall be deemed to have been made if the  
13 Secretary has not acted within 90 days of the  
14 date that the duly elected officers of the Native  
15 Hawaiian governing entity have submitted the  
16 organic governing documents of the Native Ha-  
17 waiian governing entity to the Secretary.

18               (3) FEDERAL RECOGNITION.—Notwithstanding  
19 any other provision of law, upon the election of the  
20 officers of the Native Hawaiian governing entity and  
21 the certifications by the Secretary required under  
22 paragraph (1), the United States hereby extends  
23 Federal recognition to the Native Hawaiian gov-  
24 erning entity as the representative governing body of  
25 the Native Hawaiian people.

1 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

2       There is authorized to be appropriated such sums as  
3 may be necessary to carry out the activities authorized in  
4 this Act.

5 **SEC. 8. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**  
6 **THORITY; NEGOTIATIONS.**

7       (a) REAFFIRMATION.—The delegation by the United  
8 States of authority to the State of Hawaii to address the  
9 conditions of the indigenous, native people of Hawaii con-  
10 tained in the Act entitled “An Act to provide for the ad-  
11 mission of the State of Hawaii into the Union” approved  
12 March 18, 1959 (Public Law 86–3, 73 Stat. 5) is hereby  
13 reaffirmed.

14       (b) NEGOTIATIONS.—Upon the Federal recognition  
15 of the Native Hawaiian governing entity by the United  
16 States, the United States is authorized to negotiate and  
17 enter into an agreement with the State of Hawaii and the  
18 Native Hawaiian governing entity regarding the transfer  
19 of lands, resources, and assets dedicated to Native Hawai-  
20 ian use to the Native Hawaiian governing entity. Nothing  
21 in this Act is intended to serve as a settlement of any  
22 claims against the United States.

23 **SEC. 9. APPLICABILITY OF CERTAIN FEDERAL LAWS.**

24       (a) INDIAN GAMING REGULATORY ACT.—Nothing  
25 contained in this Act shall be construed as an authoriza-  
26 tion for the Native Hawaiian governing entity to conduct

1 gaming activities under the authority of the Indian Gam-  
2 ing Regulatory Act (25 U.S.C. 2701 et seq.).

3 (b) ~~BUREAU OF INDIAN AFFAIRS.~~—Nothing con-  
4 tained in this Act shall be construed as an authorization  
5 for eligibility to participate in any programs and services  
6 provided by the Bureau of Indian Affairs for any persons  
7 not otherwise eligible for such programs or services.

8 **SEC. 10. SEVERABILITY.**

9 In the event that any section or provision of this Act  
10 is held invalid, it is the intent of Congress that the remain-  
11 ing sections or provisions of this Act shall continue in full  
12 force and effect.

13 **SECTION 1. SHORT TITLE.**

14 *This Act may be cited as the “Native Hawaiian Gov-*  
15 *ernment Reorganization Act of 2004”.*

16 **SEC. 2. FINDINGS.**

17 *Congress finds that—*

18 *(1) the Constitution vests Congress with the au-*  
19 *thority to address the conditions of the indigenous,*  
20 *native people of the United States;*

21 *(2) Native Hawaiians, the native people of the*  
22 *Hawaiian archipelago that is now part of the United*  
23 *States, are indigenous, native people of the United*  
24 *States;*

1           (3) *the United States has a special political and*  
2           *legal responsibility to promote the welfare of the na-*  
3           *tive people of the United States, including Native Ha-*  
4           *waiians;*

5           (4) *under the treaty making power of the United*  
6           *States, Congress exercised its constitutional authority*  
7           *to confirm treaties between the United States and the*  
8           *Kingdom of Hawaii, and from 1826 until 1893, the*  
9           *United States—*

10           (A) *recognized the sovereignty of the King-*  
11           *dom of Hawaii;*

12           (B) *accorded full diplomatic recognition to*  
13           *the Kingdom of Hawaii; and*

14           (C) *entered into treaties and conventions*  
15           *with the Kingdom of Hawaii to govern commerce*  
16           *and navigation in 1826, 1842, 1849, 1875, and*  
17           *1887;*

18           (5) *pursuant to the Hawaiian Homes Commis-*  
19           *sion Act, 1920 (42 Stat. 108, chapter 42), the United*  
20           *States set aside approximately 203,500 acres of land*  
21           *to address the conditions of Native Hawaiians in the*  
22           *Federal territory that later became the State of Ha-*  
23           *waii;*

24           (6) *by setting aside 203,500 acres of land for Na-*  
25           *tive Hawaiian homesteads and farms, the Hawaiian*

1       *Homes Commission Act assists the members of the*  
2       *Native Hawaiian community in maintaining distinct*  
3       *native settlements throughout the State of Hawaii;*

4               *(7) approximately 6,800 Native Hawaiian fami-*  
5       *lies reside on the Hawaiian Home Lands and ap-*  
6       *proximately 18,000 Native Hawaiians who are eligi-*  
7       *ble to reside on the Hawaiian Home Lands are on a*  
8       *waiting list to receive assignments of Hawaiian*  
9       *Home Lands;*

10              *(8)(A) in 1959, as part of the compact with the*  
11       *United States admitting Hawaii into the Union,*  
12       *Congress established a public trust (commonly known*  
13       *as the “ceded lands trust”), for 5 purposes, 1 of which*  
14       *is the betterment of the conditions of Native Hawai-*  
15       *ians;*

16              *(B) the public trust consists of lands, including*  
17       *submerged lands, natural resources, and the revenues*  
18       *derived from the lands; and*

19              *(C) the assets of this public trust have never been*  
20       *completely inventoried or segregated;*

21              *(9) Native Hawaiians have continuously sought*  
22       *access to the ceded lands in order to establish and*  
23       *maintain native settlements and distinct native com-*  
24       *munities throughout the State;*



1           (10) *the Hawaiian Home Lands and other ceded*  
2           *lands provide an important foundation for the ability*  
3           *of the Native Hawaiian community to maintain the*  
4           *practice of Native Hawaiian culture, language, and*  
5           *traditions, and for the survival and economic self-suf-*  
6           *ficiency of the Native Hawaiian people;*

7           (11) *Native Hawaiians continue to maintain*  
8           *other distinctly native areas in Hawaii;*

9           (12) *on November 23, 1993, Public Law 103–150*  
10          *(107 Stat. 1510) (commonly known as the “Apology*  
11          *Resolution”) was enacted into law, extending an*  
12          *apology on behalf of the United States to the native*  
13          *people of Hawaii for the United States’ role in the*  
14          *overthrow of the Kingdom of Hawaii;*

15          (13) *the Apology Resolution acknowledges that*  
16          *the overthrow of the Kingdom of Hawaii occurred*  
17          *with the active participation of agents and citizens of*  
18          *the United States and further acknowledges that the*  
19          *Native Hawaiian people never directly relinquished*  
20          *to the United States their claims to their inherent*  
21          *sovereignty as a people over their national lands, ei-*  
22          *ther through the Kingdom of Hawaii or through a*  
23          *plebiscite or referendum;*

24          (14) *the Apology Resolution expresses the com-*  
25          *mitment of Congress and the President—*

1                   (A) to acknowledge the ramifications of the  
2                   overthrow of the Kingdom of Hawaii;

3                   (B) to support reconciliation efforts between  
4                   the United States and Native Hawaiians; and

5                   (C) to consult with Native Hawaiians on  
6                   the reconciliation process as called for in the  
7                   Apology Resolution;

8                   (15) despite the overthrow of the government of  
9                   the Kingdom of Hawaii, Native Hawaiians have con-  
10                  tinued to maintain their separate identity as a dis-  
11                  tinct native community through cultural, social, and  
12                  political institutions, and to give expression to their  
13                  rights as native people to self-determination, self-gov-  
14                  ernance, and economic self-sufficiency;

15                  (16) Native Hawaiians have also given expres-  
16                  sion to their rights as native people to self-determina-  
17                  tion, self-governance, and economic self-sufficiency—

18                         (A) through the provision of governmental  
19                         services to Native Hawaiians, including the pro-  
20                         vision of—

21                                 (i) health care services;

22                                 (ii) educational programs;

23                                 (iii) employment and training pro-  
24                                 grams;

- 1                   (iv) economic development assistance  
2                   programs;  
3                   (v) children's services;  
4                   (vi) conservation programs;  
5                   (vii) fish and wildlife protection;  
6                   (viii) agricultural programs;  
7                   (ix) native language immersion pro-  
8                   grams;  
9                   (x) native language immersion schools  
10                  from kindergarten through high school;  
11                  (xi) college and master's degree pro-  
12                  grams in native language immersion in-  
13                  struction;  
14                  (xii) traditional justice programs, and  
15                  (B) by continuing their efforts to enhance  
16                  Native Hawaiian self-determination and local  
17                  control;  
18                  (17) Native Hawaiians are actively engaged in  
19                  Native Hawaiian cultural practices, traditional agri-  
20                  cultural methods, fishing and subsistence practices,  
21                  maintenance of cultural use areas and sacred sites,  
22                  protection of burial sites, and the exercise of their tra-  
23                  ditional rights to gather medicinal plants and herbs,  
24                  and food sources;

1           (18) *the Native Hawaiian people wish to pre-*  
2           *serve, develop, and transmit to future generations of*  
3           *Native Hawaiians their lands and Native Hawaiian*  
4           *political and cultural identity in accordance with*  
5           *their traditions, beliefs, customs and practices, lan-*  
6           *guage, and social and political institutions, to control*  
7           *and manage their own lands, including ceded lands,*  
8           *and to achieve greater self-determination over their*  
9           *own affairs;*

10          (19) *this Act provides a process within the*  
11          *framework of Federal law for the Native Hawaiian*  
12          *people to exercise their inherent rights as a distinct,*  
13          *indigenous, native community to reorganize a Native*  
14          *Hawaiian governing entity for the purpose of giving*  
15          *expression to their rights as native people to self-de-*  
16          *termination and self-governance;*

17          (20) *Congress—*

18                 (A) *has declared that the United States has*  
19                 *a special responsibility for the welfare of the na-*  
20                 *tive peoples of the United States, including Na-*  
21                 *tive Hawaiians;*

22                 (B) *has identified Native Hawaiians as a*  
23                 *distinct group of indigenous, native people of the*  
24                 *United States within the scope of its authority*

1           *under the Constitution, and has enacted scores of*  
2           *statutes on their behalf; and*

3           *(C) has delegated broad authority to the*  
4           *State of Hawaii to administer some of the*  
5           *United States' responsibilities as they relate to*  
6           *the Native Hawaiian people and their lands;*

7           *(21) the United States has recognized and re-*  
8           *affirmed the special political and legal relationship*  
9           *with the Native Hawaiian people through the enact-*  
10          *ment of the Act entitled, "An Act to provide for the*  
11          *admission of the State of Hawaii into the Union",*  
12          *approved March 18, 1959 (Public Law 86-3; 73 Stat.*  
13          *4), by—*

14          *(A) ceding to the State of Hawaii title to*  
15          *the public lands formerly held by the United*  
16          *States, and mandating that those lands be held*  
17          *as a public trust for 5 purposes, 1 of which is*  
18          *for the betterment of the conditions of Native*  
19          *Hawaiians; and*

20          *(B) transferring the United States' respon-*  
21          *sibility for the administration of the Hawaiian*  
22          *Home Lands to the State of Hawaii, but retain-*  
23          *ing the authority to enforce the trust, including*  
24          *the exclusive right of the United States to consent*  
25          *to any actions affecting the lands that comprise*

1        *the corpus of the trust and any amendments to*  
2        *the Hawaiian Homes Commission Act, 1920 (42*  
3        *Stat. 108, chapter 42) that are enacted by the*  
4        *legislature of the State of Hawaii affecting the*  
5        *beneficiaries under the Act;*

6        *(22) the United States has continually recog-*  
7        *nized and reaffirmed that—*

8                *(A) Native Hawaiians have a cultural, his-*  
9                *toric, and land-based link to the aboriginal, in-*  
10               *digenuous, native people who exercised sovereignty*  
11               *over the Hawaiian Islands;*

12               *(B) Native Hawaiians have never relin-*  
13               *quished their claims to sovereignty or their sov-*  
14               *ereign lands;*

15               *(C) the United States extends services to*  
16               *Native Hawaiians because of their unique status*  
17               *as the indigenous, native people of a once-sov-*  
18               *ereign nation with whom the United States has*  
19               *a political and legal relationship; and*

20               *(D) the special trust relationship of Amer-*  
21               *ican Indians, Alaska Natives, and Native Ha-*  
22               *waiians to the United States arises out of their*  
23               *status as aboriginal, indigenous, native people of*  
24               *the United States; and*

1           (23) *the State of Hawaii supports the reaffirma-*  
2           *tion of the political and legal relationship between the*  
3           *Native Hawaiian governing entity and the United*  
4           *States as evidenced by 2 unanimous resolutions en-*  
5           *acted by the Hawaii State Legislature in the 2000*  
6           *and 2001 sessions of the Legislature and by the testi-*  
7           *mony of the Governor of the State of Hawaii before*  
8           *the Committee on Indian Affairs of the Senate on*  
9           *February 25, 2003.*

10 **SEC. 3. DEFINITIONS.**

11       *In this Act:*

12           (1) *ABORIGINAL, INDIGENOUS, NATIVE PEO-*  
13           *PLE.—The term “aboriginal, indigenous, native peo-*  
14           *ple” means people whom Congress has recognized as*  
15           *the original inhabitants of the lands that later became*  
16           *part of the United States and who exercised sov-*  
17           *ereignty in the areas that later became part of the*  
18           *United States.*

19           (2) *ADULT MEMBER.—The term “adult member”*  
20           *means a Native Hawaiian who has attained the age*  
21           *of 18 and who elects to participate in the reorganiza-*  
22           *tion of the Native Hawaiian governing entity.*

23           (3) *APOLOGY RESOLUTION.—The term “Apology*  
24           *Resolution” means Public Law 103–150, (107 Stat.*  
25           *1510), a Joint Resolution extending an apology to*

1       *Native Hawaiians on behalf of the United States for*  
2       *the participation of agents of the United States in the*  
3       *January 17, 1893 overthrow of the Kingdom of Ha-*  
4       *waii.*

5           (4) *COMMISSION.—The term “commission”*  
6       *means the Commission established under section 7(b)*  
7       *to provide for the certification that those adult mem-*  
8       *bers of the Native Hawaiian community listed on the*  
9       *roll meet the definition of Native Hawaiian set forth*  
10       *in section 3(8).*

11           (5) *COUNCIL.—The term “council” means the*  
12       *Native Hawaiian Interim Governing Council estab-*  
13       *lished under section 7(c)(2).*

14           (6) *INDIGENOUS, NATIVE PEOPLE.—The term*  
15       *“indigenous, native people” means the lineal descend-*  
16       *ants of the aboriginal, indigenous, native people of the*  
17       *United States.*

18           (7) *INTERAGENCY COORDINATING GROUP.—The*  
19       *term “Interagency Coordinating Group” means the*  
20       *Native Hawaiian Interagency Coordinating Group*  
21       *established under section 6.*

22           (8) *NATIVE HAWAIIAN.—For the purpose of es-*  
23       *tablishing the roll authorized under section 7(c)(1)*  
24       *and before the reaffirmation of the political and legal*  
25       *relationship between the United States and the Native*



1       *Hawaiian governing entity, the term “Native Hawai-*  
2       *ian” means—*

3               *(A) an individual who is one of the indige-*  
4               *nous, native people of Hawaii and who is a di-*  
5               *rect lineal descendant of the aboriginal, indige-*  
6               *nous, native people who—*

7                       *(i) resided in the islands that now*  
8                       *comprise the State of Hawaii on or before*  
9                       *January 1, 1893; and*

10                      *(ii) occupied and exercised sovereignty*  
11                      *in the Hawaiian archipelago, including the*  
12                      *area that now constitutes the State of Ha-*  
13                      *waii; or*

14               *(B) an individual who is one of the indige-*  
15               *nous, native people of Hawaii and who was eli-*  
16               *gible in 1921 for the programs authorized by the*  
17               *Hawaiian Homes Commission Act (42 Stat. 108,*  
18               *chapter 42) or a direct lineal descendant of that*  
19               *individual.*

20               *(9) NATIVE HAWAIIAN GOVERNING ENTITY.—The*  
21               *term “Native Hawaiian Governing Entity” means*  
22               *the governing entity organized by the Native Hawai-*  
23               *ian people pursuant to this Act.*

1           (10) *OFFICE.*—*The term “Office” means the*  
2           *United States Office for Native Hawaiian Relations*  
3           *established under section 5(a).*

4           (11) *SECRETARY.*—*The term “Secretary” means*  
5           *the Secretary of the Department of the Interior.*

6   **SEC. 4. UNITED STATES POLICY AND PURPOSE.**

7           (a) *POLICY.*—*The United States reaffirms that—*

8                 (1) *Native Hawaiians are a unique and distinct,*  
9                 *indigenous, native people with whom the United*  
10                *States has a special political and legal relationship;*

11               (2) *the United States has a special political and*  
12                *legal relationship with the Native Hawaiian people*  
13                *which includes promoting the welfare of Native Ha-*  
14                *waiians;*

15               (3) *Congress possesses the authority under the*  
16                *Constitution, including but not limited to Article I,*  
17                *section 8, clause 3, to enact legislation to address the*  
18                *conditions of Native Hawaiians and has exercised*  
19                *this authority through the enactment of—*

20                         (A) *the Hawaiian Homes Commission Act,*  
21                         *1920 (42 Stat. 108, chapter 42);*

22                         (B) *the Act entitled “An Act to provide for*  
23                         *the admission of the State of Hawaii into the*  
24                         *Union”, approved March 18, 1959 (Public Law*  
25                         *86–3, 73 Stat. 4); and*

1                   (C) more than 150 other Federal laws ad-  
2                   dressing the conditions of Native Hawaiians;

3                   (4) Native Hawaiians have—

4                   (A) an inherent right to autonomy in their  
5                   internal affairs;

6                   (B) an inherent right of self-determination  
7                   and self-governance;

8                   (C) the right to reorganize a Native Hawai-  
9                   ian governing entity; and

10                  (D) the right to become economically self-  
11                  sufficient; and

12                  (5) the United States shall continue to engage in  
13                  a process of reconciliation and political relations with  
14                  the Native Hawaiian people.

15                  (b) *PURPOSE.*—The purpose of this Act is to provide  
16                  a process for the reorganization of the Native Hawaiian  
17                  governing entity and the reaffirmation of the political and  
18                  legal relationship between the United States and the Native  
19                  Hawaiian governing entity for purposes of continuing a  
20                  government-to-government relationship.

21                  **SEC. 5. UNITED STATES OFFICE FOR NATIVE HAWAIIAN RE-**  
22                  **LATIONS.**

23                  (a) *ESTABLISHMENT.*—There is established within the  
24                  Office of the Secretary of the United States Office for Native  
25                  Hawaiian Relations.

1       ***(b) DUTIES.—The Office shall—***

2               ***(1) continue the process of reconciliation with***  
3       ***the Native Hawaiian people in furtherance of the***  
4       ***Apology Resolution;***

5               ***(2) upon the reaffirmation of the political and***  
6       ***legal relationship between the Native Hawaiian gov-***  
7       ***erning entity and the United States, effectuate and***  
8       ***coordinate the special political and legal relationship***  
9       ***between the Native Hawaiian governing entity and***  
10       ***the United States through the Secretary, and with all***  
11       ***other Federal agencies;***

12               ***(3) fully integrate the principle and practice of***  
13       ***meaningful, regular, and appropriate consultation***  
14       ***with the Native Hawaiian governing entity by pro-***  
15       ***viding timely notice to, and consulting with, the Na-***  
16       ***tive Hawaiian people and the Native Hawaiian gov-***  
17       ***erning entity before taking any actions that may have***  
18       ***the potential to significantly affect Native Hawaiian***  
19       ***resources, rights, or lands;***

20               ***(4) consult with the Interagency Coordinating***  
21       ***Group, other Federal agencies, the Governor of the***  
22       ***State of Hawaii and relevant agencies of the State of***  
23       ***Hawaii on policies, practices, and proposed actions***  
24       ***affecting Native Hawaiian resources, rights, or lands;***  
25       ***and***

1           (5) *prepare and submit to the Committee on In-*  
2           *dian Affairs and the Committee on Energy and Nat-*  
3           *ural Resources of the Senate, the Committee on Re-*  
4           *sources of the House of Representatives, an annual re-*  
5           *port detailing the activities of the Interagency Coordi-*  
6           *nating Group that are undertaken with respect to the*  
7           *continuing process of reconciliation and to effect*  
8           *meaningful consultation with the Native Hawaiian*  
9           *governing entity and providing recommendations for*  
10          *any necessary changes to Federal law or regulations*  
11          *promulgated under the authority of Federal law.*

12   **SEC. 6. NATIVE HAWAIIAN INTERAGENCY COORDINATING**  
13                   **GROUP.**

14          (a) *ESTABLISHMENT.*—*In recognition that Federal*  
15          *programs authorized to address the conditions of Native*  
16          *Hawaiians are largely administered by Federal agencies*  
17          *other than the Department of the Interior, there is estab-*  
18          *lished an interagency coordinating group to be known as*  
19          *the “Native Hawaiian Interagency Coordinating Group”.*

20          (b) *COMPOSITION.*—*The Interagency Coordinating*  
21          *Group shall be composed of officials, to be designated by*  
22          *the President, from—*

23                (1) *each Federal agency that administers Native*  
24                *Hawaiian programs, establishes or implements poli-*  
25                *cies that affect Native Hawaiians, or whose actions*

1       *may significantly or uniquely impact Native Hawai-*  
2       *ian resources, rights, or lands; and*

3               *(2) the Office.*

4       *(c) LEAD AGENCY.—*

5               *(1) IN GENERAL.—The Department of the Inte-*  
6       *rior shall serve as the lead agency of the Interagency*  
7       *Coordinating Group.*

8               *(2) MEETINGS.—The Secretary shall convene*  
9       *meetings of the Interagency Coordinating Group.*

10       *(d) DUTIES.—The Interagency Coordinating Group*  
11       *shall—*

12               *(1) coordinate Federal programs and policies*  
13       *that affect Native Hawaiians or actions by any agen-*  
14       *cy or agencies of the Federal Government that may*  
15       *significantly or uniquely affect Native Hawaiian re-*  
16       *sources, rights, or lands;*

17               *(2) ensure that each Federal agency develops a*  
18       *policy on consultation with the Native Hawaiian peo-*  
19       *ple, and upon the reaffirmation of the political and*  
20       *legal relationship between the Native Hawaiian gov-*  
21       *erning entity and the United States, consultation*  
22       *with the Native Hawaiian governing entity; and*

23               *(3) ensure the participation of each Federal*  
24       *agency in the development of the report to Congress*  
25       *authorized in section 5(b)(5).*

1 **SEC. 7. PROCESS FOR THE REORGANIZATION OF THE NA-**  
2 **TIVE HAWAIIAN GOVERNING ENTITY AND THE**  
3 **REAFFIRMATION OF THE POLITICAL AND**  
4 **LEGAL RELATIONSHIP BETWEEN THE UNITED**  
5 **STATES AND THE NATIVE HAWAIIAN GOV-**  
6 **ERNING ENTITY.**

7 (a) *RECOGNITION OF THE NATIVE HAWAIIAN GOV-*  
8 *ERNING ENTITY.*—*The right of the Native Hawaiian people*  
9 *to reorganize the Native Hawaiian governing entity to pro-*  
10 *vide for their common welfare and to adopt appropriate*  
11 *organic governing documents is recognized by the United*  
12 *States.*

13 (b) *COMMISSION.*—

14 (1) *IN GENERAL.*—*There is authorized to be es-*  
15 *tablished a Commission to be composed of nine mem-*  
16 *bers for the purposes of—*

17 (A) *preparing and maintaining a roll of the*  
18 *adult members of the Native Hawaiian commu-*  
19 *nity who elect to participate in the reorganiza-*  
20 *tion of the Native Hawaiian governing entity;*  
21 *and*

22 (B) *certifying that the adult members of the*  
23 *Native Hawaiian community proposed for inclu-*  
24 *sion on the roll meet the definition of Native Ha-*  
25 *waiian in section 3(8).*

26 (2) *MEMBERSHIP.*—

1                   (A) *APPOINTMENT.*—*Within 180 days of the*  
2                   *date of enactment of this Act, the Secretary shall*  
3                   *appoint the members of the Commission in ac-*  
4                   *cordance with subclause (B). Any vacancy on the*  
5                   *Commission shall not affect its powers and shall*  
6                   *be filled in the same manner as the original ap-*  
7                   *pointment.*

8                   (B) *REQUIREMENTS.*—*The members of the*  
9                   *Commission shall be Native Hawaiian, as de-*  
10                  *finied in section 3(8), and shall have expertise in*  
11                  *the determination of Native Hawaiian ancestry*  
12                  *and lineal descendancy.*

13                  (3) *EXPENSES.*—*Each member of the Commis-*  
14                  *sion shall be allowed travel expenses, including per*  
15                  *diem in lieu of subsistence, at rates authorized for*  
16                  *employees of agencies under subchapter I of chapter*  
17                  *57 of title 5, United States Code, while away from*  
18                  *their homes or regular places of business in the per-*  
19                  *formance of services for the Commission.*

20                  (4) *DUTIES.*—*The Commission shall—*

21                         (A) *prepare and maintain a roll of the*  
22                         *adult members of the Native Hawaiian commu-*  
23                         *nity who elect to participate in the reorganiza-*  
24                         *tion of the Native Hawaiian governing entity;*  
25                         *and*



1           (B) *certify that each of the adult members*  
2           *of the Native Hawaiian community proposed for*  
3           *inclusion on the roll meet the definition of Na-*  
4           *tive Hawaiian in section 3(8).*

5           (5) *STAFF.—*

6           (A) *IN GENERAL.—The Commission may,*  
7           *without regard to the civil service laws (includ-*  
8           *ing regulations), appoint and terminate an exec-*  
9           *utive director and such other additional per-*  
10          *sonnel as are necessary to enable the Commission*  
11          *to perform the duties of the Commission.*

12          (B) *COMPENSATION.—*

13               (i) *IN GENERAL.—Except as provided*  
14               *in clause (ii), the Commission may fix the*  
15               *compensation of the executive director and*  
16               *other personnel without regard to the provi-*  
17               *sions of chapter 51 and subchapter III of*  
18               *chapter 53 of title 5, United States Code,*  
19               *relating to classification of positions and*  
20               *General Schedule pay rates.*

21               (ii) *MAXIMUM RATE OF PAY.—The rate*  
22               *of pay for the executive director and other*  
23               *personnel shall not exceed the rate payable*  
24               *for level V of the Executive Schedule under*  
25               *section 5316 of title 5, United States Code.*

1           (6) *DETAIL OF FEDERAL GOVERNMENT EMPLOY-*  
2       *EES.—*

3                   (A) *IN GENERAL.—An employee of the Fed-*  
4       *eral Government may be detailed to the Commis-*  
5       *sion without reimbursement.*

6                   (B) *CIVIL SERVICE STATUS.—The detail of*  
7       *the employee shall be without interruption or*  
8       *loss of civil service status or privilege.*

9           (7) *PROCUREMENT OF TEMPORARY AND INTER-*  
10       *MITTENT SERVICES.—The Commission may procure*  
11       *temporary and intermittent services in accordance*  
12       *with section 3109(b) of title 5, United States Code, at*  
13       *rates for individuals that do not exceed the daily*  
14       *equivalent of the annual rate of basic pay prescribed*  
15       *for level V of the Executive Schedule under section*  
16       *5316 of that title.*

17           (8) *EXPIRATION.—The Secretary shall dissolve*  
18       *the Commission upon the reaffirmation of the polit-*  
19       *ical and legal relationship between the Native Hawai-*  
20       *ian governing entity and the United States.*

21       (c) *PROCESS FOR THE REORGANIZATION OF THE NA-*  
22       *TIVE HAWAIIAN GOVERNING ENTITY.—*

23           (1) *ROLL.—*

24                   (A) *CONTENTS.—The roll shall include the*  
25       *names of the adult members of the Native Ha-*

1       *waiian community who elect to participate in*  
2       *the reorganization of the Native Hawaiian gov-*  
3       *erning entity and are certified to be Native Ha-*  
4       *waiian as defined in section 3(8) by the Com-*  
5       *mission.*

6               *(B) FORMATION OF ROLL.—Each adult*  
7       *member of the Native Hawaiian community who*  
8       *elects to participate in the reorganization of the*  
9       *Native Hawaiian governing entity shall submit*  
10       *to the Commission documentation in the form es-*  
11       *tablished by the Commission that is sufficient to*  
12       *enable the Commission to determine whether the*  
13       *individual meets the definition of Native Hawai-*  
14       *ian in section 3(8).*

15               *(C) DOCUMENTATION.—The Commission*  
16       *shall—*

17                       *(i) identify the types of documentation*  
18       *that may be submitted to the Commission*  
19       *that would enable the Commission to deter-*  
20       *mine whether an individual meets the defi-*  
21       *inition of Native Hawaiian in section 3(8);*

22                       *(ii) establish a standard format for the*  
23       *submission of documentation; and*

1                   (iii) publish information related to  
2                   subclauses (i) and (ii) in the Federal Reg-  
3                   ister;

4                   (D) CONSULTATION.—In making deter-  
5                   minations that each of the adult members of the  
6                   Native Hawaiian community proposed for inclu-  
7                   sion on the roll meets the definition of Native  
8                   Hawaiian in section 3(8), the Commission may  
9                   consult with Native Hawaiian organizations,  
10                  agencies of the State of Hawaii including but  
11                  not limited to the Department of Hawaiian  
12                  Home Lands, the Office of Hawaiian Affairs,  
13                  and the State Department of Health, and other  
14                  entities with expertise and experience in the de-  
15                  termination of Native Hawaiian ancestry and  
16                  lineal descendency.

17                  (E) CERTIFICATION AND SUBMITTAL OF  
18                  ROLL TO SECRETARY.—The Commission shall—

19                       (i) submit the roll containing the  
20                       names of the adult members of the Native  
21                       Hawaiian community who meet the defini-  
22                       tion of Native Hawaiian in section 3(8) to  
23                       the Secretary within two years from the  
24                       date on which the Commission is fully com-  
25                       posed; and

1                   (ii) *certify to the Secretary that each of*  
2                   *the adult members of the Native Hawaiian*  
3                   *community proposed for inclusion on the*  
4                   *roll meets the definition of Native Hawai-*  
5                   *ian in section 3(8).*

6                   (F) *PUBLICATION.*—*Upon certification by*  
7                   *the Commission to the Secretary that those listed*  
8                   *on the roll meet the definition of Native Hawai-*  
9                   *ian in section 3(8), the Secretary shall publish*  
10                  *the roll in the Federal Register.*

11                  (G) *APPEAL.*—*The Secretary may establish*  
12                  *a mechanism for an appeal for any person whose*  
13                  *name is excluded from the roll who claims to*  
14                  *meet the definition of Native Hawaiian in sec-*  
15                  *tion 3(8) and to be 18 years of age or older.*

16                  (H) *PUBLICATION; UPDATE.*—*The Secretary*  
17                  *shall—*

18                         (i) *publish the roll regardless of wheth-*  
19                         *er appeals are pending;*

20                         (ii) *update the roll and the publication*  
21                         *of the roll on the final disposition of any*  
22                         *appeal;*

23                         (iii) *update the roll to include any Na-*  
24                         *tive Hawaiian who has attained the age of*  
25                         *18 and who has been certified by the Com-*

1                   *mission as meeting the definition of Native*  
2                   *Hawaiian in section 3(8) after the initial*  
3                   *publication of the roll or after any subse-*  
4                   *quent publications of the roll.*

5                   *(I) FAILURE TO ACT.—If the Secretary fails*  
6                   *to publish the roll, not later than 90 days after*  
7                   *the date on which the roll is submitted to the*  
8                   *Secretary, the Commission shall publish the roll*  
9                   *notwithstanding any order or directive issued by*  
10                  *the Secretary or any other official of the Depart-*  
11                  *ment of the Interior to the contrary.*

12                  *(J) EFFECT OF PUBLICATION.—The publi-*  
13                  *cation of the initial and updated roll shall serve*  
14                  *as the basis for the eligibility of adult members*  
15                  *of the Native Hawaiian community whose names*  
16                  *are listed on those rolls to participate in the re-*  
17                  *organization of the Native Hawaiian governing*  
18                  *entity.*

19                  *(2) ORGANIZATION OF THE NATIVE HAWAIIAN IN-*  
20                  *TERIM GOVERNING COUNCIL.—*

21                  *(A) ORGANIZATION.—The adult members of*  
22                  *the Native Hawaiian community listed on the*  
23                  *roll published under this section may—*

1                   (i) *develop criteria for candidates to be*  
2                   *elected to serve on the Native Hawaiian In-*  
3                   *terim Governing Council;*

4                   (ii) *determine the structure of the*  
5                   *Council; and*

6                   (iii) *elect members from individuals*  
7                   *listed on the roll published under this sub-*  
8                   *section to the Council.*

9                   (B) *POWERS.—*

10                  (i) *IN GENERAL.—The Council—*

11                         (I) *may represent those listed on*  
12                         *the roll published under this section in*  
13                         *the implementation of this Act; and*

14                         (II) *shall have no powers other*  
15                         *than powers given to the Council under*  
16                         *this Act.*

17                   (ii) *FUNDING.—The Council may enter*  
18                   *into a contract with, or obtain a grant*  
19                   *from, any Federal or State agency to carry*  
20                   *out clause (iii).*

21                   (iii) *ACTIVITIES.—*

22                         (I) *IN GENERAL.—The Council*  
23                         *may conduct a referendum among the*  
24                         *adult members of the Native Hawaiian*  
25                         *community listed on the roll published*

1                    *under this subsection for the purpose of*  
2                    *determining the proposed elements of*  
3                    *the organic governing documents of the*  
4                    *Native Hawaiian governing entity, in-*  
5                    *cluding but not limited to—*

6                    *(aa) the proposed criteria for*  
7                    *citizenship of the Native Hawai-*  
8                    *ian governing entity;*

9                    *(bb) the proposed powers and*  
10                  *authorities to be exercised by the*  
11                  *Native Hawaiian governing enti-*  
12                  *ty, as well as the proposed privi-*  
13                  *leges and immunities of the Na-*  
14                  *tive Hawaiian governing entity;*

15                  *(cc) the proposed civil rights*  
16                  *and protection of the rights of the*  
17                  *citizens of the Native Hawaiian*  
18                  *governing entity and all persons*  
19                  *affected by the exercise of govern-*  
20                  *mental powers and authorities of*  
21                  *the Native Hawaiian governing*  
22                  *entity; and*

23                  *(dd) other issues determined*  
24                  *appropriate by the Council.*



1                   (II) *DEVELOPMENT OF ORGANIC*  
2                   *GOVERNING DOCUMENTS.*—*Based on*  
3                   *the referendum, the Council may de-*  
4                   *velop proposed organic governing docu-*  
5                   *ments for the Native Hawaiian gov-*  
6                   *erning entity.*

7                   (III) *DISTRIBUTION.*—*The Coun-*  
8                   *cil may distribute to all adult members*  
9                   *of the Native Hawaiian community*  
10                  *listed on the roll published under this*  
11                  *subsection—*

12                   (aa) *a copy of the proposed*  
13                   *organic governing documents, as*  
14                   *drafted by the Council; and*

15                   (bb) *a brief impartial de-*  
16                   *scription of the proposed organic*  
17                   *governing documents;*

18                  (IV) *ELECTIONS.*—*The Council*  
19                  *may hold elections for the purpose of*  
20                  *ratifying the proposed organic gov-*  
21                  *erning documents, and on certification*  
22                  *of the organic governing documents by*  
23                  *the Secretary in accordance with para-*  
24                  *graph (4), hold elections of the officers*

1                   *of the Native Hawaiian governing en-*  
2                   *tity pursuant to paragraph (5).*

3                   (3) *SUBMITTAL OF ORGANIC GOVERNING DOCU-*  
4                   *MENTS.—Following the reorganization of the Native*  
5                   *Hawaiian governing entity and the adoption of or-*  
6                   *ganic governing documents, the Council shall submit*  
7                   *the organic governing documents of the Native Ha-*  
8                   *waiian governing entity to the Secretary.*

9                   (4) *CERTIFICATIONS.—*

10                   (A) *IN GENERAL.—Within the context of the*  
11                   *future negotiations to be conducted under the au-*  
12                   *thority of section 8(b)(1), and the subsequent ac-*  
13                   *tions by the Congress and the State of Hawaii*  
14                   *to enact legislation to implement the agreements*  
15                   *of the three governments, not later than 90 days*  
16                   *after the date on which the Council submits the*  
17                   *organic governing documents to the Secretary,*  
18                   *the Secretary shall certify that the organic gov-*  
19                   *erning documents—*

20                   (i) *establish the criteria for citizenship*  
21                   *in the Native Hawaiian governing entity;*

22                   (ii) *were adopted by a majority vote of*  
23                   *the adult members of the Native Hawaiian*  
24                   *community whose names are listed on the*  
25                   *roll published by the Secretary;*

1                   (iii) provide authority for the Native  
2                   Hawaiian governing entity to negotiate  
3                   with Federal, State, and local governments,  
4                   and other entities;

5                   (iv) provide for the exercise of govern-  
6                   mental authorities by the Native Hawaiian  
7                   governing entity, including any authorities  
8                   that may be delegated to the Native Hawai-  
9                   ian governing entity by the United States  
10                  and the State of Hawaii following negotia-  
11                  tions authorized in section 8(b)(1) and the  
12                  enactment of legislation to implement the  
13                  agreements of the three governments;

14                  (v) prevent the sale, disposition, lease,  
15                  or encumbrance of lands, interests in lands,  
16                  or other assets of the Native Hawaiian gov-  
17                  erning entity without the consent of the Na-  
18                  tive Hawaiian governing entity;

19                  (vi) provide for the protection of the  
20                  civil rights of the citizens of the Native Ha-  
21                  waiian governing entity and all persons af-  
22                  fected by the exercise of governmental pow-  
23                  ers and authorities by the Native Hawaiian  
24                  governing entity; and

1                   (vii) are consistent with applicable  
2                   Federal law and the special political and  
3                   legal relationship between the United States  
4                   and the indigenous, native people of the  
5                   United States; provided that the provisions  
6                   of Public Law 103-454, 25 U.S.C. 479a,  
7                   shall not apply.

8                   (B) RESUBMISSION IN CASE OF NONCOMPLI-  
9                   ANCE WITH THE REQUIREMENTS OF SUBPARA-  
10                  GRAPH (A).—

11                  (i) RESUBMISSION BY THE SEC-  
12                  RETARY.—If the Secretary determines that  
13                  the organic governing documents, or any  
14                  part of the documents, do not meet all of the  
15                  requirements set forth in subparagraph (A),  
16                  the Secretary shall resubmit the organic  
17                  governing documents to the Council, along  
18                  with a justification for each of the Sec-  
19                  retary's findings as to why the provisions  
20                  are not in full compliance.

21                  (ii) AMENDMENT AND RESUBMISSION  
22                  OF ORGANIC GOVERNING DOCUMENTS.—If  
23                  the organic governing documents are resub-  
24                  mitted to the Council by the Secretary  
25                  under clause (i), the Council shall—

1                   (I) amend the organic governing  
2                   documents to ensure that the docu-  
3                   ments meet all the requirements set  
4                   forth in subparagraph (A); and

5                   (II) resubmit the amended organic  
6                   governing documents to the Secretary  
7                   for certification in accordance with  
8                   this paragraph.

9                   (C) CERTIFICATIONS DEEMED MADE.—The  
10                  certifications under paragraph (4) shall be  
11                  deemed to have been made if the Secretary has  
12                  not acted within 90 days after the date on which  
13                  the Council has submitted the organic governing  
14                  documents of the Native Hawaiian governing en-  
15                  tity to the Secretary.

16                  (5) ELECTIONS.—On completion of the certifi-  
17                  cations by the Secretary under paragraph (4), the  
18                  Council may hold elections of the officers of the Native  
19                  Hawaiian governing entity.

20                  (6) REAFFIRMATION.—Notwithstanding any  
21                  other provision of law, upon the certifications re-  
22                  quired under paragraph (4) and the election of the of-  
23                  ficers of the Native Hawaiian governing entity, the  
24                  political and legal relationship between the United  
25                  States and the Native Hawaiian governing entity is

1       *hereby reaffirmed and the United States extends Fed-*  
2       *eral recognition to the Native Hawaiian governing*  
3       *entity as the representative governing body of the Na-*  
4       *tive Hawaiian people.*

5   **SEC. 8. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**  
6       **THORITY; NEGOTIATIONS; CLAIMS.**

7       *(a) REAFFIRMATION.—The delegation by the United*  
8       *States of authority to the State of Hawaii to address the*  
9       *conditions of the indigenous, native people of Hawaii con-*  
10      *tained in the Act entitled (An Act to provide for the admis-*  
11      *sion of the State of Hawaii into the Union( approved*  
12      *March 18, 1959 (Public Law 86–3, 73 Stat. 5) is re-*  
13      *affirmed.*

14      *(b) NEGOTIATIONS.—*

15           *(1) IN GENERAL.—Upon the reaffirmation of the*  
16      *political and legal relationship between the United*  
17      *States and the Native Hawaiian governing entity, the*  
18      *United States and the State of Hawaii may enter*  
19      *into negotiations with the Native Hawaiian gov-*  
20      *erning entity designed to lead to an agreement ad-*  
21      *ressing such matters as—*

22           *(A) the transfer of lands, natural resources,*  
23           *and other assets, and the protection of existing*  
24           *rights related to such lands or resources;*

1           (B) the exercise of governmental authority  
2 over any transferred lands, natural resources,  
3 and other assets, including land use;

4           (C) the exercise of civil and criminal juris-  
5 diction;

6           (D) the delegation of governmental powers  
7 and authorities to the Native Hawaiian gov-  
8 erning entity by the United States and the State  
9 of Hawaii; and

10          (E) any residual responsibilities of the  
11 United States and the State of Hawaii.

12          (2) AMENDMENTS TO EXISTING LAWS.—Upon  
13 agreement on any matter or matters negotiated with  
14 the United States, the State of Hawaii, and the Na-  
15 tive Hawaiian governing entity, the parties shall  
16 submit—

17           (A) to the Committee on Indian Affairs of  
18 the Senate, the Committee on Energy and Nat-  
19 ural Resources of the Senate, and the Committee  
20 on Resources of the House of Representatives,  
21 recommendations for proposed amendments to  
22 Federal law that will enable the implementation  
23 of agreements reached between the three govern-  
24 ments; and

1                   (B) to the Governor and the legislature of  
2                   the State of Hawaii, recommendations for pro-  
3                   posed amendments to State law that will enable  
4                   the implementation of agreements reached be-  
5                   tween the three governments.

6           (c) CLAIMS.—

7                   (1) IN GENERAL.—Nothing in this Act serves as  
8                   a settlement of any claim against the United States.

9                   (2) STATUTE OF LIMITATIONS.—Any claim  
10                  against the United States arising under Federal law  
11                  that—

12                   (A) is in existence on the date of enactment  
13                   of this Act;

14                   (B) is asserted by the Native Hawaiian gov-  
15                   erning entity on behalf of the Native Hawaiian  
16                   people; and

17                   (C) relates to the legal and political rela-  
18                   tionship between the United States and the Na-  
19                   tive Hawaiian people;

20                  shall be brought in the court of jurisdiction over such  
21                  claims not later than 20 years after the date on which  
22                  Federal recognition is extended to the Native Hawai-  
23                  ian governing entity under section 7(c)(6).



1 **SEC. 9. APPLICABILITY OF CERTAIN FEDERAL LAWS.**

2 (a) *INDIAN GAMING REGULATORY ACT.*—Nothing in  
3 this Act shall be construed to authorize the Native Hawai-  
4 ian governing entity to conduct gaming activities under the  
5 authority of the Indian Gaming Regulatory Act (25 U.S.C.  
6 2701 et seq.).

7 (b) *BUREAU OF INDIAN AFFAIRS.*—Nothing contained  
8 in this Act provides an authorization for eligibility to par-  
9 ticipate in any programs and services provided by the Bu-  
10 reau of Indian Affairs for any persons not otherwise eligible  
11 for the programs or services.

12 **SEC. 10. SEVERABILITY.**

13 If any section or provision of this Act is held invalid,  
14 it is the intent of Congress that the remaining sections or  
15 provisions shall continue in full force and effect.

16 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

17 There are authorized to be appropriated such sums as  
18 are necessary to carry out this Act.